

DALE E. HENKINS

IBLA 80-612

Decided January 5, 1981

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring appellant's mining claims abandoned and void. AA-16456 through AA-16463.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(2) (1976), if unpatented mining claims located after Oct. 21, 1976, are not supported annually by either an affidavit of assessment work or a notice of intention to hold, the claim will be conclusively deemed abandoned and void, despite appellant's statement that there was no intent to abandon and he did not fully understand the regulations.

2. Notice: Generally--Regulations: Generally

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: Dale E. Henkins, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Dale E. Henkins appeals from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated March 28, 1980, declaring eight lode mining claims abandoned and void. ^{1/} Appellant's mining claims were located on December 1, 1977, and were duly recorded with BLM pursuant to section 314(b) of the Federal Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1976). BLM held the mining claims to be abandoned and void because appellant failed to timely file affidavits of assessment work or notice of intention to hold as required by 43 CFR 3833.2-1(b)(1). A timely appeal was filed.

[1] Sections 314(a)(1) and (2) of FLPMA, 43 U.S.C. § 1744(a)(1) and (2) (1976), and the pertinent regulation, 43 CFR 3833.2-1(b)(1), require that the owner of an unpatented mining claim located after October 21, 1976, shall prior to December 31 of each year following the calendar year in which the claim was located, file with BLM evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim. Failure to file the required instruments is deemed conclusively to constitute an abandonment of the mining claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a). These claims were located in 1977. Thus, one or the other of the documents had to be filed prior to December 31 of 1978, the year following the calendar year in which the claims were located.

When appellant failed to file either an affidavit or notice of intention, BLM properly held the claims to have been abandoned and declared them void. ^{2/} Blackburn Enterprise, 41 IBLA 115 (1979); Juan Munoz, 39 IBLA 72 (1979); Public Service Co. of Oklahoma, 38 IBLA 193 (1978); John R. Carruthers, 38 IBLA 77 (1978); Donald H. Little, 37 IBLA 1 (1978); Donald L. Nordwick, 36 IBLA 238 (1978); Paul S. Coupey, 35 IBLA 112 (1978).

[2] Appellant admits that the required documents were untimely filed and that he was aware of the statute and regulations albeit confused by them. Such confusion is not a sufficient basis to prevent the voiding of these claims as required by 43 CFR 3833.4(a). All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. §§ 1507,

^{1/} Appellant's mining claims are AA-16456 through AA-16463, Sweetheart #1 through #8 lode mining claims.

^{2/} We recognize that under the provisions of 30 U.S.C. § 28 (1976) appellant was not required to perform assessment work until the 1978-79 assessment year. Section 314(a) of FLPMA, however, requires a filing of a notice of intention to hold the claim in such a circumstance.

1510 (1976). Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). Appellant's excuse provides no exception to this rule. Robert W. Hansen, 46 IBLA 93 (1980).

We note in closing that appellant may relocate these claims and file notice of this as provided in 43 CFR 3833.1, subject to any intervening closure of the land to mining location or rights of third parties.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski

Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Douglas E. Henriques
Administrative Judge

